IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

CRP.No. 1065 of 2005()

AGAINST THE ORDER DATED 04/03/2005 IN EP. 206 /2000 IN OS.312/1997 of MUNSIF COURT, KUTHUPARAMBA

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REVN. PETITIONER/RESPONDENT/SURETY OF THE DECREE-HOLDER:

KIZHAKKEYIL AMMINI, D/O. JOSEPH,
AGED 54 YEARS, NO OCCUPATION,THONDIPARAMBIL HOUSE,
KOLAYAD AMSOM, PUTHALAM DESOM, P.O. KOLAYAD,
THALASSERY TALUK.

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

RESPONDENT/PETITIONER/PLAINTIFF:

CHALIYELIL JOB, S/O. PAILI,
AGED 53 YEARS, AGRICULTURIST, KOLAYAD AMSOM,
PUTHALAM DESOM, P.O. KOLAYAD, THALASSERY TALUK.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NOS.2982/05 & 3429/05 IN C.R.P.NO.1065 OF 2005

DISMISSED.

21.8.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

PIUS C. KURIAKOSE,J.

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C.R.P. No.1065 of 2005

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Dated: 21st August, 2007

ORDER

An autorickshaw belonging to one N.V.Vijayan who was the defendant in a suit for recovery of money was ordered to be attached before judgment under Order 38 Rule V C.P.C. The court on an application submitted by Vijayan lifted the order of attachment on condition that a bond is given by Vijayan with two sureties for production of the autorickshaw as and when directed in that regard by the court and failing such production, pay the value of the autoridkshaw. The suit was decreed and E.P.No.322/98 was filed by the decree-holder seeking recovery of the amounts. One of the prayers in the E.P. was a direction to the petitioner who was one of the sureties in the security bond furnished to the court for release of the autorickshaw to produce the autorickshaw. Pursuant to the court,s direction the autorickshaw in question was produced by the petitioner before the court. At that juncture two claim petitions were filed by the financiers who had given finance to the original owner Mr.Vijayan for purchasing the autorickshaw and the court allowed one of the petitions, E.A.468/99, released the autorickshaw to the claimant therein. In fact the court allowed the claim petition

E.A.468/99 filed by Vijaya Bank, Nedumpuram Chal Branch and released the autorickshaw to the Bank. Once E.A.468/99 was allowed the decree-holder filed application for impleading the revision petitioner and also for incorporating her property in E.P.322/98. Thereafter that E.P. was dismissed as not pressed by the decree-holder. It is subsequently that the present E.P., E.P.206/2000 was filed by the decree-holder with a prayer to proceed against the property of the revision petitioner impleading the revision petitioner as a respondent. It was contended by the revision petitioner that her obligation under the surety bond was only to produce the autorickshaw and that the said obligation has been discharged and therefore she is not liable for the decree debt. Repelling that contention the execution court has passed the impugned order permitting to proceed against the revision petitioner's property.

2. I have heard the submissions of Mr.K.V.Pavithran, learned counsel for the petitioner and those of Mr.M.K.Sumod, learned counsel for the respondent-decree-holder.

3. I have gone through the bond which was submitted by the revision petitioner to the court. The essential terms of which can be translated as follows:

"that the said defendant shall produce and place at the disposal of the court, when required the property specified in the schedule or value of the same or such portion thereof as may be sufficient to satisfy the decree and in default of his doing so I bind myself, my heirs and executors to pay the said court, at its order, the said sum of Rs.21,000/- or such sum not exceeding the sum as the said court may adjudge."

The property shown in the schedule is autorickshaw bearing registration No.KL.13/C7141 and no other property. The learned Munsiff under the impugned order refers to Section 145 of the C.P.C. and opines that it is the mandate of law that the decree-holder shall proceed against the surety as if the surety is a party to the decree. I am afraid that the learned Munsiff has not applied his mind to the extent necessary, to Section 145 of the C.P.C. What is made enforcible under that Section is the liability of the surety under the surety bond and nothing more. The liability of the surety under the bond is to ensure that the defendant produces and places at the disposal of the court the autorickshaw described in the schedule as and when required by the court and to pay a maximum amount of Rs.21,000/- (the estimated value of the autorickshaw) upon default

in ensuring production of the autorickshaw. It was sub-section (c) of Section 145 which was relevant in this case. What has been given by the petitioner is the guarantee that the defendant shall produce before the court the schedule autorickshaw upon directions by the court. In the instant case, as directed by the court in the claim petition filed by Vijaya Bank, the defendant did produce the autorickshaw and the court was able to release the autorickshaw to Vijaya Bank. The liability of the petitioner ceased upon such production. I am unable to agree with the learned Munsiff that over and above that liability, the petitioner has undertaken to pay the decree debt. I set aside the impugned order and allow the C.R.P. The Execution Petition will stand dismissed as against the revision petitioner.

srd **PIUS C.KURIAKOSE, JUDGE**